

**GOLDBERG SEGALLA LLP**

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Attorneys for Defendants,

Builders FirstSource, Inc. (also improperly named as Builders FirstSource), BFS Operations LLC (successor by merger to Builders FirstSource-Atlantic Group, LLC) and BFS Group LLC (successor by merger to ProBuild Company LLC d/b/a Builders FirstSource)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**JACOB YODER. Incapacitated, by and through  
SHAWN YODER and NATASHA YODER,  
Plenary Guardians of the Estate of  
JACOB YODER, and SHAWN YODER and  
NATASHA YODER, in their own right**

Plaintiffs,

v.

**CONWAY RACING & TRUCKING LLC;  
AARON J. PACHECO; BUILDERS  
FIRSTSOURCE; BUILDERS FIRSTSOURCE,  
INC.; BUILDERS FIRSTSOURCE –  
ATLANTIC GROUP, LLC; PROBUILD  
COMPANY LLC d/b/a BUILDERS  
FIRSTSOURCE; D.R. HORTON, INC.; and  
JOHN DOE #1**

Defendants

CIVIL ACTION - LAW

CASE NO.: 1:22-cv-5980

**NOTICE OF REMOVAL AND  
COPIES OF ALL PROCESS AND  
PLEADINGS**

**NOTICE OF REMOVAL AND COPIES OF ALL PROCESS AND PLEADINGS**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Builders FirstSource, Inc. (also improperly named as Builders FirstSource), BFS Operations LLC (*successor by merger* to Builders FirstSource-Atlantic Group, LLC) and BFS Group LLC (*successor by merger* to

ProBuild Company LLC d/b/a Builders FirstSource) (“Petitioners”) submit the following Notice of Removal from the Superior Court of New Jersey, Law Division, Gloucester County, the Court in which the above-referenced matter is now pending, to the United States District Court for the District of New Jersey. In support of its Notice of Removal, Petitioners state as follows:

**Nature of Action**

1. This action arises from an October 2, 2020 motor vehicle accident in North East, Maryland. (See Plaintiffs’ complaint, at ¶¶ 82 and 83, attached hereto as Exhibit A.)
2. Plaintiffs commenced this action on October 3, 2022 by filing a complaint in the Superior Court of New Jersey, Law Division, Gloucester County, bearing docket number GLO-L-1044-22.
3. Pursuant to 28 U.S.C. § 1446(a), Petitioners have attached copies of all process, pleadings and orders served upon them, including: A true and correct copy of Plaintiffs’ complaint, dated October 3, 2022, attached hereto as Exhibit A.

**Timeliness of Removal**

4. No defendant, including Petitioners, has been served with Plaintiffs’ Complaint.
5. This Notice of Removal is being filed timely pursuant to 28 U.S.C. § 1446(b).

**Amount in Controversy**

6. A defendant’s notice of removal need only include a “plausible allegation” the amount in controversy exceeds the jurisdictional threshold. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) (citing 28 U.S.C. § 1446(a)).

7. In their Complaint, Plaintiffs allege that Jacob Yoder, the operator of one of the motor vehicles in the subject accident, was “rendered incapacitated as the result of the motor vehicle accident herein described.” (*See* Exhibit A at ¶ 4).
8. Plaintiff Jacob Yoder, incapacitated, claims injuries including brain damage, brain bleeds, a subdural hemotoma, an epidural hemotoma, a left temporal fracture, a sphenoid sinus fractures, a Grade II bilateral ICA dissection, a multiple compartment hemotoma of the brain, facial fractures, dissection of the internal carotid artery, vertebral artery dissection, post-concussive syndrome and a coma. (*See* Exhibit A at ¶84).
9. Therefore, the amount in controversy in this case as alleged exceeds \$75,000, exclusive of interest and costs.

#### **Diversity of Citizenship**

10. 28 U.S.C. §1441(a) provides that a state court action over which a district court of the United States would possess original jurisdiction may be removed to the district court for the district and division embracing the place where the state court action is pending.
11. A district court shall have original jurisdiction over a proceeding wherein the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. §1332(a).
12. A corporation shall be deemed to be a citizen of the state in which it is incorporated and the state of its principal place of business. 28 U.S.C. §1332(c)(1).

13. The citizenship of partnerships, limited liability companies and other unincorporated associations is determined by the citizenship of its members. *Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337, 338 (3d. Cir. 2013)(citing *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 418 (3d. Cir. 2010)).
14. A natural person is deemed to be a citizen of the state where he is domiciled. *Swiger v. Allegheny Energy*, 540 F.3d 179, 181 (3d Cir. 2008)(citing *Gilbert v. David*, 235 U.S. 561, 569 (1915)).
15. Plaintiffs, Jacob Yoder, incapacitated, Shawn Yoder and Natasha Yoder, reside at 413 S. 5<sup>th</sup> Street, Oxford, Pennsylvania 19363. (See Exhibit “A” at ¶¶1 through 3).
16. Defendant Aaron J. Pacheco has yet to be served with the Complaint such that his citizenship is irrelevant to the diversity of citizenship analysis.
17. Defendant Conaway Racing & Trucking LLC has yet to be served with the Complaint such that its state of citizenship is irrelevant to the diversity of citizenship analysis.
18. Defendant Builders FirstSource is a fictitious name such that its citizenship shall be disregarded. 28 U.S.C. §1441(a).
19. Defendant Builders FirstSource, Inc. is incorporated in Delaware with a principal place of business in Texas.
20. Defendant BFS Operations LLC (*successor by merger to Builders FirstSource-Atlantic Group, LLC*) is a limited liability company. Its only member is Defendant FirstSource, Inc., which is incorporated in Delaware with a principal place of business in Texas.

21. Defendant BFS Group LLC (*successor by merger to ProBuild Company LLC d/b/a Builders FirstSource*), is a limited liability company. Its sole member is Defendant FirstSource, Inc., which is incorporated in Delaware with a principal place of business in Texas.

22. Defendant D.R. Horton, Inc. is incorporated in Delaware with a principal place of business in Texas.

23. Pursuant to 28 U.S.C. § 1332 (c)(1), full diversity exists among all parties in this action because the defendants are citizens of states other than the state where Plaintiff is a citizen.

#### **Plea for Removal**

24. 28 U.S.C. §1441(a) provides that a state court action over which a district court of the United States would possess original jurisdiction may be removed to the district court for the district and division embracing the place where the state court action is pending.

25. There is complete diversity of citizenship and the amount in controversy exceeds the jurisdictional requirement of seventy-five thousand dollars (\$75,000.00); therefore, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 and removal of this proceeding to this Court is proper pursuant to 28 U.S.C. § 1441.

26. No properly joined and served defendant is a citizen of the forum state of New Jersey such that removal is not precluded by 28 U.S.C. §1441(b).

27. Since the Superior County of New Jersey, Law Division, Gloucester County is located within the District of New Jersey, removal of this case to the United States District Court for the District of New Jersey is proper because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. §1441(a).

28. Written notice is being given to all parties and to the Superior Court of New Jersey, Law Division, Gloucester County, that this Notice of Removal is being filed with this Court.

**WHEREFORE**, Petitioners, Defendants Builders FirstSource, Inc. (also improperly named as Builders FirstSource), BFS Operations LLC (successor by merger to Builders FirstSource-Atlantic Group, LLC) and BFS Group LLC (successor by merger to ProBuild Company LLC d/b/a Builders FirstSource) request that the entire state court action under Docket Number GLO-L-1044-22, currently pending in the Superior Court of New Jersey, Gloucester County, be removed to this Court for all further proceedings.

**GOLDBERG SEGALLA LLP**

Attorneys for Defendants  
Builders FirstSource, Inc. (also improperly  
named as Builders FirstSource), BFS Operations  
LLC (successor by merger to Builders  
FirstSource-Atlantic Group, LLC) and BFS  
Group LLC (successor by merger to ProBuild  
Company LLC d/b/a Builders FirstSource)

By: \_\_\_\_\_

  
JOHN S. GORMALLY, ESQ.

Dated: October 10, 2022